



Republic of Kenya

Ministry of Lands and Physical Planning

Regulatory Impact Assessment (RIA)

On

**The Electronic Land Transaction, Registration and Conveyancing
Regulations**

List of the proposed Statutory Instruments

1. Land Registration (Electronic Transactions) Regulations, 2020
2. Survey (Electronic Cadastre Transactions) Regulations, 2020
3. Stamp Duty (Valuation) Regulations, 2020
4. Stamp Duty (Amendment) Regulations, 2020
5. Land (Amendment) Regulations, 2020
6. Land (Extension and Renewal of Leases) (Amendment) Rules, 2020
7. The Land (Allocation of Public Land) (Amendment) Regulations, 2020; and
8. Physical and Land Use Planning (Electronic Development Control and Enforcement System) Regulations, 2020

This Regulatory Impact Assessment (RIA) has been prepared by the Ministry of Lands and Physical Planning for the proposed Land Transactions (Electronic) Regulations, 2020 pursuant to Section 6 and 7 of the Statutory Instruments Act (No. 23 of 2013)

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THE REGULATORY IMPACT ASSESSMENT

Executive Summary

This Regulatory Impact Assessment (RIA) is a policy tool whose purpose is to examine and measure the likely benefits, costs and effects of the proposed Electronic Land Transaction Regulations.

This report provides the scope to explore the context in which the regulatory measures are proposed and examines the regulatory alternatives such as conducting business as usual, adopting administrative approaches and developing sector specific regulations to support roll out of a digitalized National Land Information System (NLIS).

The proposed Regulations are still in the process of being developed and the drafts are intended to guide public participation and involvement. Under the proposed Regulations, the land registration and administration processes as set out in the Land Act, Land Registration Act, the Survey Act, the Physical and Land Use Planning Act and the Stamp Duty Act are not going to change. There are no significant policy changes required to give effect to the proposed Regulations. What the Regulations seek to achieve are minor technical changes aimed at enabling land registration and administration processes to be undertaken electronically. This is the trend in many jurisdictions across the world.

The RIA identifies enormous benefits of developing and implementing the proposed Regulations that by far outweigh the identified costs and demerits. Among the findings of this analysis include the increased efficiency in service delivery, integrated approach by key institutions leading to informed and timely decision making, long-term savings in both financial resources and time, improved cadastral coverage and ease of doing business among others.

The RIA takes note of the incidence of the COVID-19 disease, which has prompted promulgation of numerous health protocols prohibiting holding of public meetings and keeping distance. These measures have influenced the methodology adopted for undertaking public consultations.

Finally, the RIA concludes that digitization of land records is necessary for Kenya and recommends the adoption of the Land Transactions (Electronic) Regulations to facilitate its full implementation and sustainability.

Introduction

The Ministry of Lands and Physical Planning, the National Land Commission and county governments have the mandate to administer the various land law statutes including the Land Registration Act, 2012, the Land Act, 2012, the Survey Act, Cap 299, the Community Land Act, 2016, the Physical Planning and Land Use Act, 2019 and the Land Adjudication Act, Cap 284.

The Land Registration Act and the Land Act require the Cabinet Secretary and the National Land Commission to develop and implement a National Land Information System and to maintain a land register. It is in the backdrop of the this legal requirement and the broader e-government strategy of modernization of government through improving access to government services that the MoLPP and the NLC are collaborating to digitize land records as a measure of improving service delivery in land management.

The automation of land records will be given effect through the digitalized National Land Information System (NLIS), which shall facilitate online uploading of data from the line departments including survey, valuation, registration, physical planning, land administration, adjudication and settlement. The system will be linked to the companies' registry and the Registrar of persons. The system will serve the MoLPP, county governments, National Land Commission, Kenya Revenue Authority (KRA), Banks, Judiciary, EACC, Lawyers, Surveyors, Valuers, Physical Planners and the public.

Before the roll out of the system existing paper records will scanned to extract all relevant data, the records will be validated before developing an application interface (API) and training the system users.

Digitalization will provide a standardized and integrated online platform to enable customers to access services seamlessly, embrace efficient, timely and cost effective land management processes, improve public service delivery, eliminate fraud and avoid further deterioration of paper records and requirement of storage space. It will also boost the ongoing national titling programme of securing rights to land through issuance of titles.

The system will immensely contribute to the ease of doing business, as it will shrink the nine steps of business process for property registration requiring seventy-three (73) working days to three short steps requiring only twelve days.

This programme is premised on the ongoing legal reforms, which began with the constitutional classification of land in Kenya into three broad categories. Subsequently the Land Act, 2012 and the Land Registration Act, 2013 were enacted to repeal a number of legal frameworks which required maintenance of several land registration and management regimes. The Physical and Land Use Planning, 2019 gives effect to the devolution of planning function while the Land Value (Amendment) Act, 2019 provides for assessment of land values in respect of compulsory acquisition of land.

The Regulatory Making Authority

The Ministry of Lands and Physical Planning has the responsibility of implementing the Land Registration Act, 2012, the Land Act, 2012, the Survey Act, Cap 299, the Community Land Act, 2016, Physical Planning and Land Use Act, 2019 and the Land Adjudication Act, Cap 284. The Cabinet Secretary has, in collaboration with the National Land Commission Act, the legal mandate to prescribe subsidiary legislation under the enabling legislation. The Cabinet Secretary

also has the collective responsibility of implementing the government's big four agenda by leveraging on ICT to deliver services more efficiently and contribute to improving the ease of doing business in Kenya.

Statement of the Objectives and Purpose of the Proposed Regulations

Overall, objective and purpose of the Electronic Land Transaction Regulations is to:

- i) establish a digital NLIS to provide an efficient and effective land administration system;
- ii) leverage on ICT to improve the way in which information is structured, stored, managed, delivered and used
- iii) improve the ease doing business by cutting time for property registration;
- iv) provide the legislative framework and platform for facilitating cost effective and reliable paperless transactions in land and accessing land information in a timely manner
- v) Establish an electronic payment system to improve revenue collection by eliminating revenue leakages;
- vi) reduce paper work and records that takes up lot of space and difficult to access, retrieve and store; delays; and
- vii) promote public confidence in the integrity and reliability of electronic records and electronic transactions.

Salient features of a digitalized LIMS

The automation of the MoLPP functions has been attempted many times from as early as 2004. In 2014, an enhanced EDMS¹, with three different instances of the same application were implemented in the departments of Registration, Land Administration and the National Titling Center. In 2017, the current LIMS with semi-automated customer facing application and back office processing was implemented in the Registry with a focus on electronic collection of revenue. In addition, the system has modules that support valuation, lease processing, land rent and stamp duty processing. Some of the functions of the LIMS includes:

- (a) Online application of services and ability to upload information and required documents via e-citizen such as online searches;
- (b) Online processing of applications;
- (c) Users/land owners access the system through user accounts and may initiate application for services in respect of their properties on the Public Online Self Service LIMS portal;
- (d) Online payments –e.g. land rent, stamp duty etc. that have resulted in reduced queues at the banking hall;
- (e) Provision of specific portal for lawyers, surveyors, and other professionals e.g., LSK portal;
- (f) Provision of a banks portal; and
- (g) Internally, several workflows within Land Rent, Land Administration, Land Valuation, Collector of Stamp Duty, Land Registration (Nairobi & Central) Departments have been automated.

The following system security measures have been implemented:

¹ Electronic Document Management System

- (a) Online properties must be verified by the Registrars before any transaction is allowed;
- (b) The use of audit trails;
- (c) Regular backups;
- (d) Verification of approvals through One Time Password (OTP);
- (e) Use of inbuilt system security and firewalls;
- (f) Use of SMS and email notifications; and
- (g) Owners and sellers verified through IPRS.

Future aspects of the system include:

- (a) Total automation of the land processes, that is, end to end processes;
- (b) Full implementation of cashless collection of 100% due revenue;
- (c) Upgrading of the system to ease transfer of property;
- (d) Integration with the cadastral survey data from Survey of Kenya; and
- (e) Scaling up the system to all Registries across the country.

Background and Context

Policy and Legal Background

Since the colonial era, Kenya operated a purely manual land registration system where the land registries have relied on paper records. For many years, the data once collected was stored in different formats due to the different regimes of land registration. This was not only confusing, but hindered data access and allowed for easy manipulation and fraudulent transactions. The different processes meant tedious amount of paperwork, which in turn impacted on the turnaround time for processing transactions. Over the years, the vast data collected resulted in bulky records requiring significant storage space and costly maintenance processes.

The Kenya Vision 2030 aims to provide the national long-term development blueprint to create a globally competitive and prosperous nation, transforming Kenya into a newly industrializing, middle-income country providing a high quality of life to all its citizens by 2030 in a clean and secure environment. Vision 2030 three pillars, namely the Economic, Social and Political are anchored on macroeconomic stability; continuity in governance reforms; enhanced equity and wealth creation opportunities for the poor. The Economic Pillar, which captures the expectations of the ICT market, seeks to improve the prosperity for all sectors.

The strategy of Vision 2030 is to undertake reforms in eight key sectors that form the foundation of society for socio-political and economic growth: Infrastructure, ICT, Energy, Science, Technology and Innovation (STI), Land Reform, Labour and Employment, National Values and Ethics, Public Sector Reforms, Ending Drought Emergencies and Security and Peace Building and Conflict Resolution.

Successive land reforms have witnessed the formulation of the national land policy in 2009, the classification of land into three broad categories under the Constitution of Kenya, 2010 and the promulgation of the national land use policy in 2017. The Land Act, 2012 and Land Registration Act, 2012 also saw the amalgamation different land registration regimes and repealed the various legal frameworks thereby streamlining land registration and administration.

The Land Registration Act provides for the maintenance of an electronic land register by the Registrar. Section 9 of the Act requires the Registrar to maintain a register and any document required under the Act in a secure, accessible and reliable format including electronic files and an integrated land resource register. Section 10 of the Act requires the Registrar to make available to the public (including by electronic means) the land register.

The Land Registration Act requires the Registrar to keep the documents in a secure, accessible and reliable format including electronic files and integrated land resource register.

Consequently, the Ministry has commenced a programme of automation and digitization of land registries across the country with a view to ensure efficient and effective service delivery. The shift to an online paperless land registration system is driven by the need to improve management of land records through enhanced security, accuracy and integrity of land records, improve turnaround time for registration, enhanced access to land information beside enhanced revenue collection.

In 2019, the Ministry proposed Land Registration (Electronic Land Transactions) Regulations, 2020. The regulations were intended to:

- (a) Provide the procedure for conducting electronic land transactions, electronic submission and registration of documents in all registries.
- (b) Define use as a person who enters into a user agreement for various reasons and the process of registration as a user and the Chief Registrar's role in approving applications and terminating user's access.
- (c) Provide for electronic registry system.
- (d) Process of appeal against decisions of the Chief Land Registrar.
- (e) Guidelines on the use of the system to draw and engross conveyancing documents by authorized and qualified persons.
- (f) Creation of electronic documents, instruments and generation of electronic documents or lodging and registration.
- (g) Provide for the procedure to be followed by the Registrar in registration and recording process.
- (h) To provide for limitation of liability for Cabinet Secretary and Ministry officials.

The Regulations were annulled on grounds that:

- i) Contrary to Article 259(11) of the Constitution, consultation with the National Land Commission was not adequately demonstrated and neither was it stated in the enabling clause;
- ii) The regulation making authority failed to demonstrate that it conducted sufficient public participation in the development of the Regulations, contrary to section 5 and 5A of the Statutory Instruments Act 2013;
- iii) The regulation making authority failed to submit a regulatory impact statement as required by section 6, 7 and 8 of the Statutory Instruments Act 2013;
- iv) The Regulations were not submitted to the National Assembly within the statutory timeline contemplated by section 11(1) of the Statutory Instruments Act 2013;
- v) Prescribed Forms were not provided;
- vi) The Regulations gave the Chief Land Registrar very broad powers;

- vii) The Regulations provided for a single committee to hear and determine disputes yet the Ministry had pointed out that it serves about 10 million users;
- viii) The regulations were not clear on the payment platform; and
- ix) Limitation of liability clause for the Cabinet Secretary and Ministry officials ought to be provided under the substantive law and not under Regulations.

It was in this context that the second taskforce was constituted to:

- a) Study, analyze and review the Land Registration Act, 2012; the Land Act, 2012; the Survey Act, Cap 299; the Community Land Act, 2016 Physical Planning and Land Use Act, 2019, the Land Adjudication Act, Cap 284 and National Land Commission Act, 2012 and together with the Regulations thereunder with a view to formulating new Regulations, Rules or Guidelines to facilitate electronic land transactions;
- b) Study Report of the Taskforce on Electronic Land Transaction, Registration, Conveyancing and other related Activities under Land Registration Act, 2012, Land Act, 2012 and Community Land Act, 2016, February, 2019;
- c) Carry out the assignment in compliance with the Constitution, Statutory Instruments Act, 2013 and existing legal framework;
- d) Prepare a Regulatory Impact Assessment Statement for the related formulated regulations; and
- e) Carry out public participation on the formulated Regulations and related Regulatory Impact Assessment.

Domestic context

In order to mitigate the problem(s) of paper based record keeping, the Ministry of Lands and Physical Planning intends to leverage on advancements made in the information technology field with a view to developing a digital LIMS. This process commenced by reorganizing and scanning of land records at the Nairobi and Central Registries. Subsequently, an information system accessed through the e-citizen online portal was developed and rolled out. The system enabled citizens to access services in respect to the Nairobi Registry whose records have been fully digitized. Land registry services such as conducting searches, payment of duty and revenue have been made available online on pilot basis.

On its Part, the NLC developed a Land Information Management System in respect to public land (Public Land Information Management System (PLIMS)) which is now complete and is awaiting integration with land parcel data from Survey of Kenya and subsequent roll out.

More recently, the Ministry commenced on a programme of automation and digitization of the land registries across the country. The initiative was designed to ensure efficient and effective service delivery, enhance access to information, increase customer confidence, reduced business timelines, and enhanced revenue collection. Major activities involved in the digitization of land registries include:

- a) implementation of local area networks;
- b) establishment of interconnectivity between the registries and Ardhi House;
- c) setting up of ICT equipment, that is, desktop computers, network printers, servers, scanners and photocopiers; capacity building of Registry staff;

- d) conversion of analogue records to electronic records through scanning of the green cards, white cards and parcel files; indexing of all scanned images for serialization;
- e) data extraction from green cards and white cards;
- f) verification of the data captured;
- g) uploading verified data to the Electronic Document Management System (EDMS) for online transactions;
- h) training of the officers on online transactions; and
- i) online transaction of the registration process.

However, these systems are standalone solutions either due to the choice of the Database Management System (DBMS) or lack of interconnectivity between departments and institutions.

corruption, improve on the turnaround time needed for delivery of service, increase transparency and openness, increase revenue collection for government through the online payment, improve on security, and save money spent on logistics since services will be virtually available.

International context

In 2019 the Ministry of Lands Taskforce on Electronic Land Transactions, analyzed case studies from selected commonwealth countries with similar land tenure and registration systems to Kenya. These jurisdictions were also selected because they had developed or attempted to develop LIMS. They included New Zealand, Estonia, Netherlands, England & Wales, Australia, Canada, Singapore, Tanzania, Uganda, Ghana, Germany and Rwanda.

Among the lessons learnt and important observations are:

1. Systems Architecture

The architecture of the system forms the main framework on which digitized land transactions are run, a robust and scalable enterprise software architecture and design guided by interoperability, high availability and e-governance strategy awareness, is recommended.

2. Systems Access

Universal access to the system should be provided governed by predefined user rights and privileges for various categories of users.

3. Systems Development

An Agile strategic approach to systems development, which turned out to be successful as in the cases of Netherlands and Estonia is a proven methodology that should see a swift development of NLIS. This allows for regular review of business requirements and objectives during development while deploying and commissioning modules for immediate impact, faster implementation and lower Total Cost of Ownership.

4. Systems Implementation

This should be done in a phased manner starting with a pilot phase then scheduled regional roll-out while building on lessons learned throughout the process.

5. Systems Security

This is one of the key requirements for all the stages of the conveyancing and registration processes to guard against fraud; and vulnerability to cyber-attacks and identity theft.

6. Legal Reforms

A stable and responsive legal framework is key to the adoption and implementation of digitization. The studies show that most countries had to enact new laws and amend

existing ones to make provisions and anchor e-conveyancing into law. These provide the basis developing regulations, which govern the relationship between the NLIS, operators and participants in the system, as is the case in the Australian Model.

The conclusions, which can be drawn from the above observations, are as follows:

- (a) Before embarking on digitization, it is important to reorganize the registries /cadastre and review the manual processes and workflows to remove duplicities while enhancing efficiencies;
- (b) In most jurisdictions, there exists a separate cadastre and land registry database which are then linked to other databases like in Netherlands and Estonia;
- (c) It takes a couple of years for the system to fully mature and eliminate all forms of paperwork. Most countries have adopted a phased approach to the systems development and deployment with a pilot area or region and which is scaled up to the rest of the offices and regions like in New Zealand;
- (d) In most countries, there was a private company involved in either system development or infrastructure management. This is the case in New Zealand, England & Wales and Canada;
- (e) Searches are open to public upon payment of some fee in most countries, however historical searches are restricted, and more fees are chargeable. To be able to request for the searches one has to register in the platform for authentication;
- (f) Digitization of land records and e-conveyancing is bound to be relatively budget intensive. As such, financial planning for short term (quick wins), mid-term and long term outcomes is key for the successful implementation. Inadequate budgetary allocations affected implementations in New Zealand, Canada and the UK;
- (g) Countries have done complete overhaul of their systems once overtaken by technology by providing better performing copies of the database and a solid data migration plan. System renewal and upgrades due to technological changes must follow a well-planned strategy. Netherlands had to do this in order to leap to more suitable technologies rather than do patching to obsolete technologies;
- (h) The world is adopting the block chain technology. The UK and Netherlands are exploring on the use while Estonia is already using it;
- (i) Most countries that successfully digitized land transactions adopted an all-inclusive consultative multi-sectoral user driven approach. Stakeholder participation is very important to eliminate incidences of resistance as was witnessed in countries like Australia, New Zealand and Estonia;
- (j) It emerged that strong political will is necessary to ensure focused development of LIMS as was the case in Rwanda, Estonia and Netherlands;
- (k) Systems development needs to be guided by a documented NLIS strategy/roadmap to ensure consolidated advancements in the digitization and e-Conveyancing process e.g. the case of Ghana which built on progress of LAP 1 and LAP 2;
- (l) Owing to the critical and sensitive nature of land transactions, efforts to ensure systems security, intrusion detection and prevention are key to facilitate data integrity and confidence by the citizens and other stakeholders;
- (m) To avoid duplicated efforts within government it is important to align e-government initiatives within an elaborate enterprise system architecture/infrastructure with the holistic view of interoperability of developed systems (both public and private). This

ensures that digitization and e-conveyancing aligns to such strategies since this is bound to inform or affect other government functions. The Estonian case which rides on the X-Road is one worth emulating;

- (n) E-Conveyancing in most countries was enabled with digital signatures backed by supporting legislation. One cannot overemphasize the fundamental role of digital signatures in e-conveyancing as it facilitates a paperless process; and
- (o) Reliable connectivity to the NLIS will be crucial in ensuring faster uptake and adoption i.e. both at the institutional level (for internal institutional staff) and for external end users and professionals. In most countries where digitization and e-conveyancing is successful, Internet Service Provider infrastructure and coverage is widespread and reliable e.g. Estonia, New Zealand, Australia etc.

Legal and Policy Framework for Electronic Land Transactions

The following analysis illustrate the legal and policy framework within which the Electronic Land Transaction Regulations are being developed.

Policies and laws	Measures supporting the electronic land transactions Regulations
Constitution of Kenya, 2010	<p>The Constitution sets out the principles of land policy in Kenya and requires that land shall be held, used and managed in a manner that is equitable, efficient, productive and sustainable, and in accordance with the following principles—</p> <ul style="list-style-type: none"> (a) equitable access to land; (b) security of land rights; (c) sustainable and productive management of land resources; (d) transparent and cost effective administration of land; (e) sound conservation and protection of ecologically sensitive areas; (f) elimination of gender discrimination in law, customs and practices related to land and property in land; and (g) encouragement of communities to settle land disputes through recognized local community initiatives. <p>The Constitution then declares all land in Kenya belongs to the people of Kenya collectively as a nation, as communities and as individuals and that; it shall be classified as public, community or private. All unregistered community land is to be held in trust by county governments on behalf of the respective communities.</p> <p>The Constitution further establishes the National Land Commission to manage public land on behalf</p>

	<p>of the national and county governments and to recommend a national land policy. It also requires Parliament to enact legislation to consolidate and rationalize the existing land laws and to regulate a number of matters pertaining to land management and administration.</p>
<p>Sessional Paper No. 3 of 2009 on National Land Policy</p>	<p>The National land policy was intended to guide the country towards efficient, sustainable and equitable use of land for prosperity and posterity. It was also intended to address the then critical issues of land administration, access to land, land use planning, restitution of historical injustices, environmental degradation, conflicts, unplanned proliferation of informal urban settlements, outdated legal framework, inadequate institutional framework and poor information management. The policy recognizes the above issues as having been responsible rampant land fragmentation, breakdown in land administration, disparities in land ownership and poverty.</p> <p>This has resulted in environmental, social, economic and political problems including deterioration in land quality, squatting and landlessness, disinheritance of some groups and individuals, urban squalor, under-utilization and abandonment of agricultural land, tenure insecurity and land conflicts.</p> <p>The spirit of the 2009 land policy informed the 2010 constitutional principles on land.</p>
<p>The Land Registration Act, 2012</p>	<p>This Act was intended to revise, consolidate and rationalize the multiple registration of regimes while giving effect to the constitutional principles on land and objects of devolved government relating land registration. The Act repealed:</p> <ul style="list-style-type: none"> (a) the Indian Transfer of Property Act 1882; (b) the Government Lands Act, (Cap 280); (c) the Registration of Titles Act, (Cap 281); (d) the Land Titles Act, (Chapter 282); and (e) the Registered Land Act, (Cap. 300). <p>Under section 9, the Act requires the Registrar to maintain the register and any document required to be kept under the Act in a secure, accessible and</p>

	<p>reliable format, including electronic files and an integrated land resource register.</p> <p>Section 10 provides that the Registrar shall make information in the register accessible to the public by electronic means or any other means as the Chief Land Registrar may prescribe.</p> <p>Section 15 requires the office or authority responsible for the survey of land to prepare and maintain a map or series of maps, to be known as the cadastral map, for every registration unit. The parcel boundaries on the maps are required to be geo-referenced and surveyed to standards ensuring compatibility with other documents required under the law.</p> <p>Section 110 of the Act mandates the Cabinet Secretary to make regulations prescribing, among other matters:</p> <ul style="list-style-type: none">(a) the manner and form of the registries of land, the procedures to be followed by the registries and hours they are to be open for business;(b) particulars and format to be contained in a register or other document required to be kept under this Act; and(c) any other matter for the better carrying into effect of the provisions of this Act. <p><i>Note:</i></p> <ul style="list-style-type: none">1. Regulation 16 provides that the register shall be both a paper form and an electronic format.2. Regulation 36 provides that all fees payable to the Registrar under the Regulations shall be paid by electronic means or by banker's cheque.3. Regulation 86 provides for electronic searches.4. Regulations 87 and 89 accords the Registrar power to modify prescribed forms to enable electronic transactions.5. Part XIII of the regulations deals with electronic registration and conveyancing and provides electronic dispositions as follows:
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	<ul style="list-style-type: none"> (a) the register and all documents shall be maintained in electronic form; (b) transactions and dealings shall be done electronically; (c) Cabinet Secretary may issue guidelines from time to time to enable: <ul style="list-style-type: none"> (i) setting up of an electronic communications system under the Registrar's management and control, for maintaining the register in an electronic form and for enabling the carrying out of transactions under this Act which are capable of being effected electronically; (ii) access to the public of information maintained electronically; (iii) creation of electronic documents and instruments; (iv) the recording or registration of electronic documents in the register; (v) the electronic generation and communication of applications for registration in the register; (vi) provision for a system of electronic payments in relation to transactions involving payment of fees; and (vii) other ancillary matters necessary for improving the land registration system and service delivery generally. <p>Further this Part provides the guidelines may regulate:</p> <ul style="list-style-type: none"> (a) the making up and keeping of the register and any other register provided for under the Act in electronic format; (b) the procedure to be followed by any person applying for information from the register; (c) the procedure to be followed by the persons authorized to apply for recording or registration in the register;
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	<p>(d) the procedure to be followed by the Registrar in relation to :</p> <ul style="list-style-type: none"> (i) any application; (ii) making the documents and information required available; and (iii) the recording or registration of electronic documents to which such an application relates; <p>(e) the use of the system in relation to:</p> <ul style="list-style-type: none"> (i) the kinds of instruments which may be authorized for use in the system; (ii) the persons who may be authorized to use the system having regard to the provisions of the Advocates Act (Cap. 16) on the qualification of persons who may draw and engross conveyancing documents and instruments; (iii) the suspension or revocation of a person's authorization to use the system; (iv) the method of appeal against suspension or revocation under sub paragraph (iii); (v) the imposition of obligations on persons using the system, and (vi) the creation of deemed warranties (whether in favour of the Registrar or of other users) by persons using the system; (vii) modifying any enactment; (viii) specifying instruments which may be lodged electronically; and (ix) specifying the instruments or transactions for which fees may be made by electronic means. <p>6. The regulations provide that all instruments prepared electronically shall be subject to the same requirements as any other instrument under the Act or any law in force subject such modifications, relating to the format, required to enable the use of the instrument electronically.</p> <p>7. The Land Registration (Electronic Land Transactions) (Revocation) Regulations, 2019 were revoked by LN No 187 of 2019</p>
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	<p>following a directive by the National Assembly following nullification of the Regulations for reasons stated elsewhere in this report,</p>
<p>The Land Act</p>	<p>The Land Act, 2012 was intended revise, consolidate and rationalize laws relating to land, separate land substantive law with land registration procedural law and to provide for sustainable administration and management of land. The Act repealed the Wayleaves Act (Cap. 292) and the Land Acquisition Act (Cap. 295).</p> <p>Under section 6 (h), the Act requires the Cabinet Secretary to coordinate the development and implementation of a National Land Information System in collaboration with the National Land Commission.</p> <p>Under section 160 both the Cabinet Secretary and the NLC have power to make regulations prescribing various matters including the manner of assessing value of an interest in land.</p> <p><i>Note:</i> The Land Act Regulations under Regulation 70 provide for electronic service of documents</p>
<p>The Survey Act (Cap 299)</p>	<p>The Survey Act provides for surveys, geographical names and the licensing of land surveyors, The Act requires to be reviewed to align it the digital NLIS.</p> <p>The Act lacks a framework of collaboration between the various spatial information stakeholders across the country. This has resulted in duplication in the management of land information systems. This problem arises because spatial information is being collected and or maintained by different government organizations. The crucial aspect is that all the databases used by the various organizations are supposed to be based on the Cadastre maintained by the Director of Surveys.</p> <p>Surveyors are still required to present their work using computational procedures that do not conform to technological advancement. This has forced surveyors who use relatively new</p>

	<p>technologies such as Global Navigation Satellite Systems (GNSS) or Total Stations, to convert the electronic data to paper (analogue data) before presenting their work. The process of conversion is not only time consuming but is also prone to errors.</p>
The National Land Commission Act,	<p>The Act breathes life into the National Land Commission which is established under the constitution and makes further provisions on the functions and powers of the Commission. One of the functions assigned to the Commission under Section 5 of the Act is to develop and maintain an effective land information system for management of public land.</p>
The Community Land Act	<p>The Community Land Act gives effect to Article 63(5) of the Constitution to provide for the recognition, protection and registration of community land rights; management and administration of community land; the role of county governments in relation to unregistered community land, and for connected purposes.</p> <p>Section 10 of the Act provides that there shall be maintained for each registration unit, a community land register in accordance with Section 8 of the Land Registration Act, 2012.</p> <p>The Act secures the interest of communities as far as ownership of community land that is under control of a community is concerned. The interest of communities is secured by bringing all community land under a registration regime as provided for by the Land Registration Act.</p> <p>This process involves registration of communities and putting in place the Community Land Management Committees, by the Community Land Registrar as provided under Section 7 of the Community Land Act.</p> <p>This entire process is comprehensively provided under the Community Land Regulations, 2017.</p>
The Kenya Information and Communications Act, 2013	<p>The Kenya Information and Communications Act provides for electronic commerce and for connected purposes. Under Section 83G, it is provided that where any law provides that</p>

	<p>information or other matter shall be in writing then such requirement shall be deemed to have been satisfied if such information or matter is rendered or made available in an electronic form and accessible so as to be usable for a subsequent reference.</p> <p>The electronic format of doing documents and data has through this Act, been made to rank the same as if such documents or data are physically rendered. It is therefore instructive to note that section 83G supersedes contrary provisions of other statutes.</p> <p>However, under Section 83B, any rule or law requiring writing or signatures in the creation or execution of a will; negotiable instruments and documents of title will be exempt from the provision of 83G unless the Minister11 by order modifies by removing or adding any class of transactions or matters. Processing of electronic titles may not be possible unless title documents are excluded from the list of class of transactions by the Minister hence the proposed amendment as captured in the Schedule of Proposed Amendments.</p> <p>Even though electronic signatures and advanced electronic signature are provided for in the Act, the same cannot be actualized unless the Cabinet Secretary for ICT develops regulations in line with Section 83R.</p>
The Stamp Duty Act (CAP 480)	<p>The Stamp Duty Act provides for the procedure and requirements for stamping instruments. Currently, the stamp duty fees are payable online through the e-citizen portal. The fixing of the stamp denoting payment of the duty is, however, done manually by presentation of the documents to the registry.</p> <p>Under Section 2 on interpretation, ‘stamp’ means a stamp embossed or impressed by means of a dye or a franking machine or adhesive stamp; and stamped and duly stamped “mean that the instrument referred to is stamped with the required and sufficient stamp and that the stamp has been</p>

	<p>cancelled, if necessary, in accordance with the provisions of this Act”.</p> <p>This implies that documents must be physically availed at the registry for stamping.</p>
The Sectional Properties Act, 1987	<p>The Sectional Properties Act has been under review and amending Bill is pending presentation to Parliament. The Act provides for the division of buildings into units to be owned by individual proprietors and common property to be owned by proprietors of the units as tenants in common and to provide for the use and management of the units and common property for connected purposes.</p> <p>Since the individual units in a building are defined in a sectional plan, preparation of the sectional plan and registration thereof are critical elements informing registration of sectional interests in a building. Part II of the Bill is dedicated to this. Under this part, a sectional plan is prepared by a surveyor on confirmation of ownership of the parcel of land the plan will apply. To aid electronic processing and registration, it is necessary to require the sectional plan to be prepared in electronic form. This necessitates an amendment to Section 4(2) of the Bill to accommodate the electronic version of the sectional plan as a pre-requisite for registration of the sectional plan. The same will apply to Section 9(1) of the Bill, which sets out the requirements of sectional plans.</p>
The Computer Misuse and Cyber Crimes Act, 2018	<p>The Computer Misuse and Cyber Crimes Act seeks to guide and regulate electronic transactions in Kenya. Safety of the electronic systems as far as human interface is concerned is legally guaranteed by this Act.</p> <p>Risks associated with digitization of transactions and computer related offences, investigation, prosecution, sanctions and penalties are provided in the Act.</p> <p>This statute is, therefore, of great relevance since it serves as a deterrent to those who may have the intent of committing computer related offences</p>
The Physical and Land Use Planning Act, 2019	<p>The Physical and Land Use Planning Act provides for principles, procedures and standards for the preparation and implementation of physical and</p>

	<p>land use development plans at the national, county, urban, rural and cities levels.</p> <p>The Act provides for development of physical and land use planning and approval of development control applications by county governments.</p>
<p>The County Governments Act, 2012 and the Urban Areas and Cities Act, 2011</p>	<p>Parts XI and V of the County Governments Act and the Urban Areas and Cities Act respectively provide for processes of planning in respect to planning authorities/cities and urban areas/sub-counties and wards, the development control procedural aspects found in the Physical and Land Use Planning Act.</p> <p>Section 104 (3) of the County Governments Act provides that a county government shall designate county departments, cities and urban areas, sub-counties and wards as planning authorities of the county.</p> <p>Section 12 of the Urban Areas and Cities Act provides that the management of a city or a municipality shall vest in the county government and administered on its behalf by the relevant Board; a manager or such other staff.</p> <p>Further, these two statutes generally vest development control function on the county governments as well as boards and managers.</p>
<p>Valuation for Rating Act (CAP 266) and the Rating Act (CAP 267)</p>	<p>Valuation for rating Act mandates county governments to value land for the purposes of rates and other purposes. The Act applies in respect of urban areas but not agricultural land. This is a national legislation that was intended for the defunct local authorities. County governments are expected to ‘domesticate’ the Act in their respective jurisdictions.</p>

Overview of the proposed regulatory instruments

The proposed Statutory Instruments which are the subject of this analysis are:

1. Land Registration (Electronic Transactions) Regulations, 2020;
2. Survey (Electronic Cadastre Transactions) Regulations, 2020;
3. Stamp Duty (Valuation) Regulations, 2020;

4. Stamp Duty (Amendment) Regulations, 2020;
5. Land (Amendment) Regulations, 2020;
6. Land (Extension and Renewal of Leases) (Amendment) Rules, 2020;
7. The Land (Allocation of Public Land) (Amendment) Regulations, 2020; and
8. Physical and Land Use Planning (Electronic Development Control and Enforcement System) Regulations, 2020.

The table below shows the salient features of all the proposed statutory instruments:

<p>Land Registration (Electronic Transactions) Regulations, 2020</p>	<ul style="list-style-type: none"> • Application-Applies to all registries gradually, beginning with the Nairobi Registry/Schedule. • Requires the Chief Land Registrar to maintain an electronic land registry in accordance with section 7 of the Act. • The registry to be Part of LIMS. • Registrar to issue notices, certificates and other documents electronically/certify and transmit documents through the system • Requires cadastral maps to be kept in electronic form. • Authorized users (individuals and legal persons) to register their particulars in the system and open user accounts and bear certain responsibilities/provides for professional acting on behalf of clients. • CLR has power to suspend or terminate a user’s access in the system • Inter-institutional appeals committee to determine disputes arising from CLR’s decisions • Electronic search (current and historical) to be done electronically • Pre-registration process-filing of e-forms, e-signatures, uploading supporting documents, e-valuation and e-payment. • Registration to begin with e-application through the system 24/7 • Evidence of registration-e-generated notice of filing with a tracking number, which determines priority of registration. • Effect of e-registration, documents have same legal effect as paper documents. • Manual lodging of documents in exceptional circumstances. • Scrutiny and authentication of documents/power to reject and return documents to resubmission. • Electronic certificate of title or lease to be issued through the system and down loaded by the user.
<p>Survey (Electronic Cadastre Transactions) Regulations, 2020</p>	<ul style="list-style-type: none"> • Requires Director of Survey to maintain an Electronic Cadastre to be part of NLIS. • DS has power to issue an electronic notice, certificate, instrument or document

	<ul style="list-style-type: none"> • Certify a map, plan, form, document or extract of a map /send a notice or duly issued or certified map, plan, form, document or extract of a map to a user electronically. • Notification to the user to be electronic. • All survey plans, field notes, computations and other survey data to be executed and transmitted electronically, • Surveyor/User to access the electronic Cadastre through a user account created in the system and may access Cadastral maps, cadastral plans or other plans on a read only format. • DS has power to suspend or terminate a user's access in the system • Application for submission to DS to be done electronically by uploading documents which shall be numbered, checked and authenticated/ Notification of receipt of documents, • DS to update the electronic cadastral map upon payment of fees approval • Upon updating the DS shall seal the electronic cadastral map and notify either the Director land administration of the NLC as the case may be, • An adjudication register, shall be submitted to the Chief Land Registrar in electronic format. • A cadastral map of an adjudicated community land shall be submitted to the Community Land Registrar in electronic format. /Cadastral plans, cadastral maps, sectional plans including other plans, shall be provided to the CLR in electronic format. • Mutation form (LRA-27) shall be presented to the Chief Land Registrar in electronic format. • DS may, upon request prepare a parcel plan in electronic format for use in electronic conveyancing and prepare a parcel plan to be embedded to the title of that particular parcel. • Validity of electronic maps-same as physical • Electronic payment of fees
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<p>Stamp Duty (Valuation) Regulations, 2020</p>	<ul style="list-style-type: none"> • Requires the Chief Government Valuer to maintain an Electronic Valuation System (EVS) capable of electronic submission and storage of documents, monitoring the progress of the valuation processes and management of electronic communication. • CGV to approve users of the system with powers to suspend and terminate access by a user upon giving notice and grounds of termination. • Provides for appointment process of the panel of private valuers by the CGV • Application for valuation to be made electronically in prescribed form/ application to be acknowledged and assigned a tracking number • Sets out prescribed information to be contained in a report to the CGV • Valuation report accompanied by copies of other prescribed documents to be electronically submitted to the CGV for assessment and approval • Valuation report to be valid for 12 months from date of valuation, • Provides for an objection to valuation to be made electronically to the collector of stamp duty and be addressed in 14 days/ appeals to court • Valuation fees and notices under the Act to be done electronically/
<p>Stamp Duty (Amendment) Regulations, 2020</p>	<ul style="list-style-type: none"> • These Regulations seek to amend the Stamp Duty Regulations, issued under the Stamp Duty Act (Cap 480) • The Regulations seek to: • Insert new definitions for terms including certificate, electronic form, instrument, notice and system. • Make electronic means as one of the ways through which duties under the Act may be paid. • The submission of an executed instrument for purposes of the Stamp duty Act to be done electronically as an alternative to manual submission, • An application for adjudication stamp duty under paragraph 5 (3) to be done electronically. • An application for spoiled or misused stamps under Regulation 11(1) to be made electronically. <p>The regulations also propose to add the following provisions:</p> <ul style="list-style-type: none"> • Proposal to insert a new regulation 13 to require that forms under that prescribed forms may be modified to enable electronic lodgement. • A new provision providing that all notices under the Stamp duty Act may be served by registered post, electronically or physically.

<p>Land (Amendment) Regulations, 2020.</p>	<ul style="list-style-type: none"> • Proposes to amend the Land Regulations, 2017 to provide for: • Meaning of the terms :electronic” and “electronic form” • Data base for public land kept under paragraph 3 to be in electronic format • Inventory of land based natural resources to be kept electronically. • Notification and written feedback required under regulation 6 in relation to a variation order may be given in electronic form. • Inventory of public lands vested in institutions required under regulation 8 to be kept in electronic format. • Issuance of licenses and quit notice in relation to un-alienated public land to be done electronically. • Payment of land rent to be coordinated electronically. • Deletion of regulation 12 relating to procedures of obtaining the land rent certificate • Reg 13 Applications for consent to transfer, lease or sublease to be done electronically. • Regs 14 and 15: Conversion of tenure of 999 years leases for non-citizens to 99 year leases to be done electronically. • Regs 16 and 17: Subdivision, amalgamation, partition and reparation of freehold land-amend to mandate the Chief Land Registrar to require an electronic lodgement before subdivision, amalgamation, partition and reparation of freehold land. • Reg 18-19 An application for change of user to be made electronically • Reg 21-Application for consent to transfer, sublease or charge on leasehold land to be done electronically. • Insertion of new Part IVA-Electronic Lodging of instruments and documents in the system: Provides for electronic for of documents and the powers of the CLR in relation to electronic documents. Verification and refusal to accept defective documents, user accounts, obligations of users and restrictions on access.
<p>Land (Extension and Renewal) (Amendment) Rules, 2020.</p>	<ul style="list-style-type: none"> • Proposes to amend the Land (Extension and Renewal) Rules, 2017 to” • Delete the requirement under regulation 2 to apply for extension/renewal of leas to the Commission and make it the preserve of the national or county government. • Insert a provision to the effect that it shall not be a requirement for a lessee to surrender the unexpired term of an existing lease as a condition for the grant of an extension of a lease. • The application for extension/renewal shall be done electronically. • Deleting the requirement to forward the decision of approval of extension/renewal of the national government or county government to the Commission for implementation. • Extension/renewal to be done electronically.

	<ul style="list-style-type: none"> • Provisions requiring issuance of allotment letter and the restriction for new developments on the land are deleted
<p>Physical and Land Use Planning (Electronic Development Control and Enforcement System) Regulations, 2020</p>	<ul style="list-style-type: none"> • Regulates development control and enforcement activities • Establishes electronic development control and enforcement system as a module within the NLIS • Requires Director-General shall maintain in the system an electronic database for the approved physical and land use plans, development control instruments including handbooks, codes, zoning ordinances and manuals and registers of documents submitted by applicants for development permission. • Data base to be available to an authorized user, licenced professional and members of the public or authorized agents of an institution desirous to access data for research purposes. • The system to provide online links with relevant authorities for ease of information cross-referencing, enable integration for property searches, Cadastre outlay and property survey attributes for retrieval of such information for submission of development applications; and process development permission applications. • Provides for county government systems • Provides for user accounts, user obligations and professionals/public access to information in the system • Provides for suspension and termination of user access • Applications for development permissions to be done electronically by uploading required information and documents and a certificate issued electronically. • Electronic copy of the application to be circulated to relevant offices for noting and approval • Cabinet Secretary to approve/disapprove projects of national strategic importance • Provides for site visit during development and final inspection upon completion and issuance of occupation certificate. • Enforcement: Director Physical and Land use planning together with other relevant authorities to monitor developments, identify contraventions and issue remedial measures. • Provides for manual and electronic enforcement notice with conditions to be complied with by the property owner or agent. • Provides for judicial process where owner of agent fails to comply

Consultative process

Legal requirements relating to public participation and consultation

Participation of the people, inclusivity, transparency and accountability are a constitutional requirements whenever a State or public officer applies the Constitution, enacts any law or makes or implements a public policy². This requirement is premised on the sovereignty principle³ which vests all sovereign power to the people of Kenya. This power entitles the people to unfettered access to the process of making public decisions through their involvement. This ensures transparency in the formulation of policy. Further, the objects of devolution⁴ give powers of self-governance to the people and enhance their participation in the exercise of the powers of the State and in making decisions affecting them and recognize the rights of communities to manage their own affairs and to further their development. Finally, the values and principles of public service⁵ requires the involvement of the people in the process of policymaking and part, transparency and provision to the public of timely and accurate information.

With regard to the subsidiary legislation making process, the Statutory Instruments Act, the Statutory Instruments Act requires that the regulatory making authority shall make consultations before making statutory instruments (Regulations), in particular where the proposed regulations are likely to have a direct, or a substantial indirect effect on business or restrict competition. The Act provides that in determining whether any consultation that was undertaken is appropriate, the regulation making authority shall have regard to all relevant matters, including the extent to which the consultation:

- (a) drew on the knowledge of persons having expertise in fields relevant to the proposed statutory instrument; and
- (b) ensured that persons likely to be affected by the proposed statutory instrument had an adequate opportunity to comment on its proposed content.

The Statutory Instruments Act further requires that the persons to be consulted should either directly or by advertisement through representative organizations be invited to make submissions by a specified date, which should not be lesser than 14 days or be invited to participate in public hearings concerning the proposed instrument.

Initial participation of the people

When the initial taskforce was developing the Land Registration (Electronic Land Transactions) Regulations, 2019 that were annulled by Parliament, it conducted some level of public participation by holding stakeholder consultations and public hearings. The Taskforce met with Departments at the Ministry of Lands and Physical Planning, National Land Commission, Industry Experts, County Governments and Civil Society Organizations. Invitations were sent out to the stakeholders specifically requesting them to make structured submissions/presentations to the taskforce on the Status of Digitization; Challenges; Workflows; Quick Wins; Existence of a Document Management System; Security of Records; and Proposals for E-conveyancing.

² Article 10 of the Constitution

³ Article 1 of the Constitution

⁴ Article 174(c) of the Constitution

⁵ Article 232 (1) of the Constitution

Additionally, the Taskforce members made visits to the respective institutions for a firsthand experience and situational analysis i.e. Land Registries (Central & Nairobi), Land Administration, Valuation, ICT, Survey of Kenya, National Titling Centre and the Kenya National Archives and Documentation Service. In addition to the stakeholder consultative forum, the Taskforce conducted public hearings in the counties across the country from October 2 to 11, 2018.

Reports of these public consultative meetings were used in the development of the current sets of regulations. It should however be noted that Parliament determined that the Ministry did not demonstrate that it had conducted sufficient public participation in the development of the Regulations, contrary to section 5 and 5A of the Statutory Instruments Act 2013.

Current consultative process

Following the annulment by the Ministry of the Land Registration (Electronic Land Transactions) Regulations, 2019, the Ministry constituted a representative working group (Taskforce on Formulation of Regulations to facilitate Electronic Land Transactions, Registration, Conveyancing and other related activities) to prepare the current Regulations and undertake further stakeholder consultations in line with the recommendation from the National Assembly. The working group was comprised of representatives from the following institutions:

List of institutions represented in developing the Regulations:

1. Ministry of Lands and Physical Planning
2. National Land Commission
3. Institution of Surveyors of Kenya
4. Kenya Bankers Association
5. University of Nairobi
6. Law Society of Kenya
7. Kenya Law Reform Commission
8. Office of the Attorney General
9. Kenya Private Sector Alliance
10. Council of Governors
11. Directorate of Survey
12. Land Development Government Institute
13. Kenya Institute of Planners
14. Kenya Private Developers Association
15. Town and County Planners Association of Kenya

Pursuant to section 5 of the Statutory Instruments Act,⁶ the Taskforce identified the key stakeholders whom it intends to engage for consultations. These include the main professional and specialist institutions and individual who will be directly or indirectly affected by the proposed statutory instruments. They include:

1. Institute of Survey of Kenya
2. Law Society of Kenya
3. Parliamentary Committees on land for both senate and national assembly
4. Parliamentary Committee on Delegated Legislation

⁶ Institutions from where there can be drawn knowledge of persons having expertise in fields relevant to the proposed statutory instrument and persons likely to be affected by the proposed statutory instrument.

5. Council of Governors
6. Ministry of Lands and Physical Planning
7. National Land Commission
8. Kenya Bankers Sacco
9. Civil Society Organisations
10. Kenya Private Sector Alliance
11. Kenya Institute of Planners
12. Town and County Planners Association of Kenya
13. Kenya Properties Developers Association
14. General Public

The Task force also identified the following eight regions that were earmarked for public participation being geographically representative of the territory of Kenya:

- a) Nairobi
- b) Mombasa
- c) Kakamega
- d) Garrissa
- e) Meru
- f) Nyeri
- g) Kisumu
- h) Eldoret

Approach and Methodologies

According to the taskforce calendar of events, the stakeholder consultations were intended to be undertaken during the month of April 2020. Unfortunately, this coincided with the global pandemic of the COVID-19 disease, which has seen governments across the world employ certain health protocols aimed at minimizing infections. During this period, there are movement restrictions, prohibition of public or social gathering, maintaining social distance and a requirement for people offering non-essential services to work from their homes. It is therefore neither lawful nor practical to convene stakeholder consultative sessions.

This therefore forced the taskforce to adopt an approach and methodology that is conducive to the circumstances of the day. The taskforce opted to adopt the following methodology:

1. Post draft copies of the proposed Regulations together with a notice of the Regulatory Impact Assessment onto the Ministry's website, publish copies in wide circulating print media or post the to the identified stakeholders;
2. Write letters and emails to the stakeholders inviting them to make their submissions on the draft Regulations within a specified time;
3. Post an advertisement in a newspaper with national circulation inviting any person or institution to make their submissions within a specified date and directing them on where they can get copies of the Regulations;
4. Supplement with the advertisement with radio or other electronic media;
5. Hold virtual/online meetings with select stakeholders where possible.

The appropriateness of the stakeholder consultative process will be determine by the extent to which the consultation draws responses on the knowledge of persons having expertise in fields relevant to the proposed statutory instrument and the extent to which the consultation affords an

opportunity to persons likely to be affected by the proposed statutory instrument comment on its proposed content⁷.

Statement on Regulatory and Non-Regulatory Options

Option 1: Maintaining the Status Quo/ Doing nothing/definition of the problem

Maintaining the status quo simply means doing nothing and continuing in our current state.

Although the Land Act, No. 6 of 2012 makes it a function of both the Cabinet Secretary and the National Land Commission to coordinate the development and implementation of a National Land Information System⁸, Kenya lacks a fully digitalized LIMS. Land information in Kenya is managed by various organizations including the Ministry, the National Land Commission, the Survey of Kenya and the county governments. Land registration and conveyancing services are largely manual and paper based which makes the system both bureaucratic and slow. This has in turn resulted in a number of secondary problems including the following:

- i) Poor land records management system, which has resulted, to accumulation manual records, dating back to over 100 years. Apart from shortage of storage space for paper-based records, this system is inefficient and time consuming. The current system does not allow cross-referencing of records or interface of databases thus constraining orderly and timely updating of the records. Paper based systems make it hard to access stored data and information thus creating the possibility of making misinformed decisions with unreliable outcomes.
- ii) The absence of linkages and interfaces has resulted to lack of collaboration and occasioned duplication of functions between various offices and institutions. This problem arises because spatial information is collected and or maintained by different offices and institutions yet they are all expected to base their databases on the Cadastre maintained by the Director of Surveys. There has been data redundancies and wastage of resources even in cases where some of the offices have adopted digital databases without standard data model thereby making integration of the data sharing impossible. Due to this scenario, Registry users are frustrated by loss and misplacement of records, increased cases of corruption, fraud and low productivity by the service providers.
- iii) Operating a paper based LIMS in silos has resulted to delays in land transactions including the processing of survey documents, registration of documents and issuance of title deeds. This in turn affects the user and complicates the ease of doing business.
- iv) It has also led to low cadastral coverage for Kenya where only about 20% of the land is covered in the formal cadastral (fixed boundaries) system. This is further complicated by informal land tenure in most urban areas and community land ownership. It is therefore a primary and immediate need for the government to not only digitalize and automate land transactions but also to fast track the adjudication programme in the rest of the country in order to bring all the land into a unified and integrated register.

⁷ See requirement of section 5 of the Statutory Instruments Act, No 23 of 2013

⁸ A Land Information System enables a country to capture accurate, current and reliable land-related data capable of integration into other geographic systems that allow data users and administrators to retrieve, create, update, store, view, analyze and publish land information.

Option 2: Establishing LIMS administratively in the absence of the regulatory instrument

As pointed out above, the Land Registration Act provides for the maintenance of an electronic land register by the Registrar. Section 9 of the Act requires the Registrar to maintain a register and any document required under the Act in a secure, accessible and reliable format including electronic files and an integrated land resource register. Section 10 of the Act requires the Registrar to make available to the public (including by electronic means) the land register. The import of this provision is that nothing prevents the Ministry from administratively setting up a digital LIMS and giving it functions.

However the fact that the system is intended to integrate diverse offices and institutions which are not necessarily answerable to the Ministry poses implementational and enforcement questions.

Option 3: Establishing NLIS and prescribing the enabling Electronic land Transaction Regulations

Establishment of National Land Information System (NLIS) to facilitate online uploading of data from the line departments including survey, valuation, registration, physical planning, land administration, adjudication and settlement. In addition, to be linked in the system is the companies' registry and the Registrar of persons. The system will serve the MoLPP, county governments, NLC, KRA, Banks, Judiciary, EACC, Lawyers and the public

Prescribing the enabling Electronic Transaction Regulations affords the Cabinet Secretary an opportunity to guide how the NLIS is expected to work and the role of different institutions. It gives the system the much-needed legal basis and certainty, which have grave implications in terms of funding. The consultative process through which the regulations are developed also provides room for buy-in and support from the line departments and institutions and therefore increases their chances of full implementation.

Options and Impact analysis

Option 1: Maintaining the Status Quo	Option 2: Establishing LIMS administratively in the absence of the regulatory instrument	Option 3: Establishing NLIS and prescribing the enabling Electronic land Transaction Regulations
If the option of doing nothing is pursued, it will mean that land management and administration will continue to be undertaken manually and land information and records will continue to be stored on paper records. The requirement by law to	It is administratively possible for Ministry to establish a Land Information Management System. However, land administration and management involves many other departments and institutions, which outside the ambit of the ministry mandate	A digitalized National Land Information System (NLIS) with a capacity to facilitate online uploading of data from the line departments including survey, valuation, registration, physical planning, land administration, adjudication

<p>establish the NLIS will not materialize since the system cannot be established manually. It will remain costly in terms of both time and resources for the Ministry to capture, store and share information.</p> <p>The following business process for property registration involving several steps and many working days will persist:</p> <ol style="list-style-type: none"> 1) Title search-3 days 2) Land rent clearance-19 days 3) Land rate clearance-5 days 4) Consent to transfer clearance -9days 5) File valuation requisition- 4 days 6) Site visit & reporting- 20 days 7) Endorsement & assessment – 4 days 8) Payment of stamp duty- 5days 9) Title registration-5 days <p>Total 73 working days Nine steps</p> <ol style="list-style-type: none"> i. No additional budgetary implications ii. Opportunity to address existing challenges lost ii. Current challenges would persist v. Paper based and manual systems 	<p>and control. The Ministry will therefore not be in apposition to influence the robustness of the system to the extent that some aspects will be let to the goodwill of other players. An administrative measure may succeed in the short run but will face the danger of alteration or even abandonment in the end.</p> <p>There is no guarantee that the following existing steps will reduce:</p> <ol style="list-style-type: none"> 1) Title search-3 days 2) Land rent clearance-19 days 3) Land rate clearance-5 days 4) Consent to transfer clearance -9days 5) File valuation requisition- 4 days 6) Site visit & reporting- 20 days 7) Endorsement & assessment – 4 days 8) Payment of stamp duty- 5days 9) Title registration-5 days <p>Total 73 working days Nine steps</p> <ol style="list-style-type: none"> i. Additional budgetary implications ii. Some challenges addressed administratively while others persist 	<p>and settlement. In addition, to be linked in the system is the companies’ registry and the Registrar of persons. The system will serve the MoLPP, county governments, NLC, KRA, Banks, Judiciary, EACC, Lawyers and the public.</p> <p>Before the roll out of the system existing paper records will scanned to extract all relevant data, the records will be validated before developing an application interface (API) and training the system users.</p> <p>The enabling legislative framework guarantee that electronic records have the same value as manual records. The legal framework will also facilitate standardization and online integration to enable customers to access services seamlessly, embrace efficient, timely and cost effective land management processes, improve public service delivery, eliminate fraud and avoid further deterioration of paper records and requirement of storage space.</p> <p>The existing business process for property registration involving several steps and many working days will be</p>
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<p>v. Costly including hidden costs</p> <p>vi. Possibility of total collapse</p>	<p>ii. Enforcement and implemtational challenges</p> <p>v. Possibility of stand-alone databases to remain unlinked</p> <p>v. Uncertainty as to when it will become fully operational</p> <p>vi. Possibility of total collapse due to lack of public awareness</p> <p>ii. unsustainable</p>	<p>restructured into the following three major steps:</p> <ol style="list-style-type: none"> 1) Application for land rent clearance certificate and consent to transfer- 5 days 2) Valuation site visit and report writing 3 days 3) Registration of title – 4 days <p>Total 12 working days</p> <p>Three steps</p> <p>Demerits of Digitalization of land records</p> <ol style="list-style-type: none"> i) High costs of project initiation and maintenance-converting large volumes of manual records into digital records requires highly trained personnel and designing complex applications, which is expensive. Training of employees costs and costs of creating awareness among users ii) Voluminous records. It will take time to convert all manual records for the past 100years into digital. This may occasion delays and high transaction costs iii) Reconstruction of torn, misplaced and missing records. Tattered or ineligible records will pose a major challenge to digitalization.
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		<p>iv) Illiteracy. Land dealers who are illiterate and unable to afford hiring advocates will find it a challenge in using the online platform</p> <p>v) Opposition from within. There is a possibility that those working in the registries may harbor fears that the success of the exercise might prejudice their jobs.</p> <p>vi) Lack of political/institutional will. Land abuses were mainly perpetrated by persons working in public authorities to facilitate illegalities like grabbing and double registration. With digitalization this will no longer be possible hence the propensity to fight back.</p> <p>vii) Duplication. Before the system comes fully in use, there is bound to be duplication of jobs where some procedures are done manually before conversion to digital.</p> <p>Merits of Digitalization of land records</p> <p>i) Efficiency and improved service delivery by streamlining and simplifying land management and administration processes. The system helps</p>
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		<p>improve decision making by providing real time information and reports including integrated cadastral mapping.</p> <ul style="list-style-type: none"> i) Improves data accuracy and eliminates redundant or fraudulent data entries. Records in the system are easily and securely updatable and editable. ii) Transparency and accountability. The system reduces fraud and land grabbing as online records is likely to show the citizenry what land is held by whom. It provides 24/7 access to the system and data from any internet connection iii) Ease of doing business. Digitalization supports investment, productivity and growth. It enhances support to businesses dealing in land by enabling them to transact faster and flexibly through touch of a button. iv) Cost effective and value for money. It will eventually cut the costs on managing paper records. v) Time saving by reducing turnaround time for land conveyancing vi) Convenience through ability to transact without physical
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		<p>presence in the registry and ability to pay electronically</p> <p>vii) Cures the problem of misplaced, missing and torn records</p> <p>viii) Long-term preservation of records and lower archiving costs.</p> <p>ix) Enables sharing of records between Ministry, NLC, county governments, banks, companies registry etc.</p> <p>x) Reliable backup. It is a legal requirement that data stored in the system should be properly backed up.</p> <p>xi) Increased security and control. Data in the system strictly controlled in terms of permissions as to who can retrieve it.</p> <p>xii) Phased implementation to deal with cost issues and create room to inculcate lessons learnt.</p> <p>xiii) Legal and policy certainty/budgetary allocations guaranteed</p> <p>xiv) Sustainable</p>
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Preferred Option

Based on the above analysis and the experiences from other jurisdictions, option 3 is the preferred option

Economic impact of the Regulations

The economic impact of the regulations will include:

1. Improved productivity as a result of introduction of more efficient business processes

2. Economic benefit from improved and secured property rights. The establishment of an effective land administration system and security of land tenure is beneficial for the government as it supports economic development by increasing production and generating revenue to some extent. It may also enhance efficient use of scarce resources, increase household income and play an important role in reducing poverty.
3. The quality of land administration services affects revenue generation. Poor land administration, poor land valuation and inefficient and unscrupulous employees threaten tenure security and reduce the amount of revenue that can be generated from land
4. Land administration plays a crucial role in providing security of land tenure. It also evidences that the use value, collateral value and exchange value of land is increased after registration, which has benefited the housing, investment, and finance sectors of the economy. .

Environmental impact

The adoption of the proposed Regulations in themselves do not have any impact. However, the application of the Regulations within the Stakeholder environment and workplace environment create benefits mentioned in this report.

Social impact

The Regulations are sustainable service for the future and will ensure improved livelihoods through security of tenure and access to financial credit.

Reasons why other Options are not appropriate

Based on the above analysis and the experiences of other jurisdictions, options 1 and 2 are not appropriate for Kenya

Statement explaining the effect of the proposed legislation: Benefits and Costs analysis

Benefits

Shifting away from manual handling of land records to paperless, digitalized information processing system brings with it the benefits of information and communication technology namely:

1. Improved efficiency and effectiveness- A digital LIMS will eliminate the need for more physical space to store records. It will also provide an opportunity to timely update of the databases besides easing access and sharing of information.
2. An integrated approach- The old problem of information being held at different offices, duplication and data redundancies will be resolved with the introduction of a single database capable of serving different interfaced offices and institutions.
3. Reduced turnaround time for conveyancing- Delays in land transactions including the processing of survey documents, issuance of title deeds and registration of documents will be greatly reduced,

4. Improved cadastral coverage-At present only 30% of Kenya's land is covered in the formal cadastral system⁹. This is bound to improve with the adoption of a system that eliminates the delays at the registration offices.
5. Improved ease of doing business-land is key resource factor in Kenya and its administration impacts on nearly all other businesses who have to acquire land, lease premises or pay for rates to be able undertake their businesses.

Financial cost

Rolling out a digital LIMS for Kenya will involve development or purchase of the system, maintenance of the system and training of personnel to gain both operational efficiency and to cope with potential problems with the proposed system. There will also be the issue of purchasing supporting hardware and annual licenses for the software. All this is expected to be around Ksh **600 million** (estimated). Since the system will be phased out over a number of years, this budget can be spread out and financed in piece meal. This is a cost payable by the Ministry and does not implicate the user in any manner.

Effect on public sector

The depth and potential impact of electronic system of land registration on the public sector is huge. The system provides opportunity to improve public sector accountability and transparency. A computerized system offers huge potential for operational efficiencies and improved customer experiences within the public sector. It allows creation of online-access platform for individuals and businesses to request services register complaints and submit payments easily.

Computerization is also expected to improve revenue collection efforts of the Government and lower the costs associated with service delivery.

Effect on private sector

Electronic system for land registration will help to provide security of tenure to land owners necessary to support investment, productivity and growth. It will influence access to credit through the banking sector.

Effect on businesses

Businesses dealing with land registration and conveyancing will save a lot both in terms of time and in terms of resources. It will also be convenient to conveyancing advocates as it minimizes on delays and duplication of efforts. As is evidenced from the study by the Taskforce, the turnaround time for land conveyancing in Estonia reduced from 90 to 5 days. In the case of Kenya, this will reduce from 73 to 12 days with room for more improvements as the system is fully implemented.

Fundamental rights and freedoms

The proposed regulatory instruments will facilitate the full enjoyment of the right to property as stipulated under Article 40 of the Constitution. The instruments do not limit the fundamental rights and freedoms set out under the Constitution.

⁹ 2016 TF Report, Ministry of Lands and Physical Planning

Taxes/fees and revenue

The proposed regulatory instruments neither impose, waive nor vary any tax or fees imposed under any law in Kenya. Indeed the instrument seeks to provide for easier and more convenient methods of payment of land registration fees, transfer fees and stamp duty fees but not alteration of the actual fees is proposed.

Effect on existing legal frameworks

The regulatory instruments propose amendments to other existing statutory instruments for purposes of providing adequate legal framework for electronic land transactions. Where consequential amendments are required under substantive laws, a separate proposal for those amendments has been prepared. The following statutes have been identified as requiring amendments in this regard.

Statutory instruments proposed to be amended

- i. Land Regulations, 2017,
- ii. Survey Regulations. 1994
- iii. Land (Allocation of Public Land) Regulations, 2017,
- iv. Land (Extension and Renewal of Leases) Rules, 2017.

Statutes proposed for consequential amendments

- i. Land Act, 2012,
- ii. Land Registration Act, 2012,
- iii. Survey Act, Cap 299,
- iv. Stamp Duty Act, cap 480.
- v. Law of Contract, Cap 23,
- vi. Registration of Documents Act, Cap 285
- vii. Kenya Information and Communications Act, 1998.

Conclusion

Based on the analysis of this report, a National Land Information System for Kenya is not only a requirement but also extremely necessary if the country is to reap the benefits of a clean land records system. There are enormous economic, social, environmental benefits for the country to develop and implement the system. For the system to be fully implemented, it has to be wholly backed in law. The proposed Regulations are intended to achieve this important national priority.

Recommendation

Given the fact that the proposed Regulations will facilitate the full implementation of a digital NLIS, this Regulatory Impact Assessment recommends the adoption of the proposed Regulations as proposed, subject to the, alterations, adaptations, qualifications and exceptions as may be proposed during the mandatory public participation process.